

5. Local Government Mandates: The Emergency Adoption does not impose new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This regulation may require the preparation of additional forms or paperwork. Such additional paperwork is expected to be minimal.

7. Duplication: This regulation does not duplicate any existing federal, state or local regulations.

8. Alternatives: Section 94(10)(o) of the Executive law imposes an affirmative duty on the Commission to adopt rules governing the conduct of adjudicatory proceedings and appeals. Therefore, there is no alternative to amending the Commission's existing regulation if the Commission changes its procedures.

9. Federal Standards: This regulation does not exceed any minimum standards of the federal government with regard to a similar subject area.

10. Compliance Schedule: Compliance with the emergency regulation will take effect on the date it is filed with the Department of State.

#### **Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this Notice of Emergency Adoption because the rulemaking will not impose any adverse economic impact on small businesses or local governments, nor will it require or impose any reporting, record-keeping, or other affirmative acts on the part of these entities for compliance purposes. The Commission on Ethics and Lobbying in Government makes this finding based on the fact that the rule implements current law and, therefore, imposes no new requirements on such entities.

#### **Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not submitted with this Notice of Emergency Adoption because the rulemaking will not impose any adverse economic impact on rural areas, nor will it require or impose any reporting, record-keeping, or other affirmative acts on the part of rural areas. The Commission on Ethics and Lobbying in Government makes this finding based on the fact that the rule implements current law and, therefore, imposes no new requirements on such entities. Rural areas are not affected.

#### **Job Impact Statement**

A Job Impact Statement is not submitted with this Notice of Emergency Adoption because the proposed rulemaking will have limited, if any, impact on jobs or employment opportunities. This regulation implements current law and, therefore, imposes no new requirements. This regulation does not relate to job or employment opportunities.

#### **Assessment of Public Comment**

The agency received no public comment since publication of the last assessment of public comment.

## **New York Gaming Facility Location Board**

### **PROPOSED RULE MAKING NO HEARING(S) SCHEDULED**

#### **Minimum Capital Investment for Additional Gaming Facility**

**I.D. No.** GFB-04-23-00001-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** Amendment of section 602.1 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 1306(5), (9) and 1321-e(1)

**Subject:** Minimum capital investment for additional gaming facility.

**Purpose:** To establish a minimum capital investment amount for additional gaming facilities.

**Text of proposed rule:** § 602.1. Gaming facility minimum capital investment

(a) Title 2 licensees. For a gaming facility licensed pursuant to Racing, Pari-Mutuel Wagering and Breeding Law Article 13, Title 2, the [The] minimum capital investment for a gaming facility by zone and region, as such zone and regions are defined in Racing, Pari-Mutuel Wagering and Breeding Law section 1310, shall be:

[(a)] (1) In Zone Two, Region One (Counties of Columbia, Delaware, Dutchess, Greene, Orange, Sullivan and Ulster)[, as such zone

and region are defined in section 1310 of the Racing, Pari-Mutuel Wagering and Breeding Law]:

[(1)] (i) \$350,000,000 for a gaming facility in Dutchess or Orange Counties;

[(2)] (ii) \$130,000,000 for a gaming facility in Columbia, Delaware, Greene, Sullivan or Ulster Counties, if no license is awarded for a gaming facility located in Dutchess or Orange Counties; and

[(3)] (iii) \$100,000,000 for a gaming facility in Columbia, Delaware, Greene, Sullivan or Ulster Counties, if a license is awarded for a gaming facility located in Dutchess or Orange Counties.

[(b)] (2) \$135,000,000 in Zone Two, Region Two (Counties of Albany, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie and Washington)[, as such zone and region are defined in section 1310 of the Racing, Pari-Mutuel Wagering and Breeding Law].

[(c)] (3) In Zone Two, Region Five (Counties of Broome, Chemung (east of State Route 14), Schuyler (east of State Route 14), Seneca, Tioga, Tompkins, and Wayne (east of State Route 14))[, as such zone and region are defined in section 1310 of the Racing, Pari-Mutuel Wagering and Breeding Law, the following fees will apply to counties as designated below]:

[(1)] (i) \$85,000,000 for a gaming facility in Broome, Chemung, Schuyler, Tioga or Tompkins Counties;

[(2)] (ii) \$135,000,000 for a gaming facility in Wayne or Seneca Counties; and

[(3)] (iii) \$70,000,000 for a gaming facility in Broome, Chemung, Schuyler, Tioga or Tompkins Counties, if a license is awarded for a gaming facility located in Wayne or Seneca Counties.

(b) Title 2-A licensees. For a gaming facility licensed pursuant to Racing, Pari-Mutuel Wagering and Breeding Law Article 13, Title 2-A, the minimum capital investment for a gaming facility shall be \$500,000,000.

**Text of proposed rule and any required statements and analyses may be obtained from:** Kristen Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, NY 12301, , (518) 388-3332, email: sitingrules@nysemail.onmicrosoft.com

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 60 days after publication of this notice.

#### **Regulatory Impact Statement**

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 1306(1) and section 1321-b prescribe that the Gaming Facility Location Board, which is established by the Commission, shall issue a request for applications ("RFA") for applicants seeking one of the additional gaming facility licenses to develop and operate a gaming facility in New York State. On January 3, 2023, the Gaming Facility Location Board issued the RFA.

Racing Law sections 1306(5) and 1321-e(1) authorize the Board to determine the minimum capital investment for each unawarded gaming facility license.

Racing Law 1306(9) authorizes the Board to promulgate any rules and regulations that it deems necessary to carry out its responsibilities.

2. LEGISLATIVE OBJECTIVES: This rule making carries out the legislative objectives of the above referenced statutes by implementing the requirements of Racing Law section 1306(5) and section 1321-e(1).

3. NEEDS AND BENEFITS: This rule making is necessary to enable the Gaming Facility Location Board to carry out its statutory duty to establish the minimum capital investment for each unawarded gaming facility license to be issued by the Commission. Some stylistic amendments are also made to the existing rule to mirror Gaming Commission style conventions.

#### **4. COSTS:**

(a) Costs to the regulated parties for the implementation of and continuing compliance with the rules: An applicant chosen for gaming facility licensure will be required, by statute, to make at least the minimum capital investment in its gaming facility.

(b) Costs to the regulating agency, the State, and local government: The proposed rules will impose no additional costs on the Board, the State or local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Gaming Commission's experience regulating racing and gaming activities within the State.

5. PAPERWORK: The proposed rules are not expected to impose any

significant paperwork requirements for gaming facility applicants and licensees.

6. **LOCAL GOVERNMENT MANDATES:** The proposed rules do not impose any mandatory program, service, duty, or responsibility upon local government because the licensing of gaming facilities is strictly a matter of State law.

7. **DUPLICATION:** The proposed rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. **ALTERNATIVES:** The Board is required to create these rules under Racing Law sections 1306(5) and 1321-e(1). The Board considered retaining existing minimum capital investment amounts for Title 2-A applicants in Zone Two (upstate counties) and setting minimum capital investment amounts by region or by county, but determined that setting a uniform minimum amount and allowing applicants to propose higher capital investment amounts as a part of their applications would best serve the competitive structure of the gaming facility application process.

9. **FEDERAL STANDARDS:** There are no federal standards applicable to the licensing of gaming facilities in New York because such licensing is solely in accordance with New York State law.

10. **COMPLIANCE SCHEDULE:** The Board anticipates that affected parties will be able to achieve compliance with the proposed rules upon the adoption of the rules.

#### **Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

The proposed changes do not require a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement. There will be no adverse impact on small businesses, local governments, rural areas or jobs.

The proposed rules prescribe the minimum capital investment for an additional gaming facility license issued by the New York State Gaming Commission. It is not expected that any small business or local government will apply for a gaming facility license.

The proposal imposes no adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. The rules apply uniformly throughout the State to any applicant seeking a license to develop and operate an additional gaming facility in the State.

The proposal will not adversely impact small businesses, local governments, jobs, or rural areas. It does not require a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, or Job Impact Statement.

## **PROPOSED RULE MAKING NO HEARING(S) SCHEDULED**

### **License Fee for Additional Gaming Facility**

**I.D. No.** GFB-04-23-00002-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** Amendment of section 601.1 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 1306(4), (9) and 1321-e(3)

**Subject:** License fee for additional gaming facility.

**Purpose:** To establish a license fee for additional gaming facilities.

**Text of proposed rule:** § 601.1. Gaming facility license fees.

(a) The license fee for a gaming facility license issued by the Gaming Commission pursuant to [subdivision 4 of section 1315 of the] Racing, Pari-Mutuel Wagering and Breeding Law *Article 13, Title 2* shall be as follows, unless a gaming facility licensee has agreed to pay an amount in excess of the fees listed below:

(1) in Zone Two, Region One (Counties of Columbia, Delaware, Dutchess, Greene, Orange, Sullivan and Ulster), as such zone and region are defined in [section 1310 of the] Racing, Pari-Mutuel Wagering and Breeding Law *section 1310*, the following fees will apply to counties as designated below:

(i) \$70,000,000 for a gaming facility in Dutchess and Orange Counties;

(ii) \$50,000,000 for a gaming facility in Columbia, Delaware, Greene, Sullivan and Ulster Counties, if no license is awarded for a gaming facility located in Dutchess or Orange Counties; and

(iii) \$35,000,000 for a gaming facility in Columbia, Delaware, Greene, Sullivan and Ulster Counties, if a license is awarded for a gaming facility located in Dutchess or Orange Counties.

(2) \$50,000,000 in Zone Two, Region Two (Counties of Albany, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie and Washington), as such zone and region are defined in [section 1310 of the] Racing, Pari-Mutuel Wagering and Breeding Law *section 1310*;

(3) in Zone Two, Region Five (Counties of Broome, Chemung (east of State Route 14), Schuyler (east of State Route 14), Seneca, Tioga, Tompkins, and Wayne (east of State Route 14)), as such zone and region are defined in [section 1310 of the] Racing, Pari-Mutuel Wagering and Breeding Law *section 1310*, the following fees will apply to counties as designated below:

(i) \$35,000,000 for a gaming facility in Broome, Chemung, Schuyler, Tioga and Tompkins Counties;

(ii) \$50,000,000 for a gaming facility in Wayne or Seneca Counties; and

(iii) \$20,000,000 for a gaming facility in Broome, Chemung, Schuyler, Tioga and Tompkins Counties, if a license is awarded for a gaming facility located in Wayne or Seneca Counties.

(b) *The license fee for a gaming facility license issued by the Gaming Commission pursuant to Racing, Pari-Mutuel Wagering and Breeding Law Article 13, Title 2-A shall be \$500,000,000, unless a gaming facility licensee has agreed to pay an amount in excess of that.*

[(b)] (c) A gaming facility licensee shall pay the required license fee by electronic fund transfer according to directions issued by the Gaming Commission.

**Text of proposed rule and any required statements and analyses may be obtained from:** Kristen Buckley, Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, NY 12301, (518) 388-3332, email: sitingrules@nysemail.onmicrosoft.com

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 60 days after publication of this notice.

#### **Regulatory Impact Statement**

1. **STATUTORY AUTHORITY:** Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 1306(1) and section 1321-b prescribe that the Gaming Facility Location Board, which is established by the Commission, shall issue a request for applications ("RFA") for applicants seeking one of the additional gaming facility licenses to develop and operate a gaming facility in New York State. On January 3, 2023, the Gaming Facility Location Board issued the RFA.

Racing Law sections 1306(4) and 1321-e(3) authorize the Board to determine a gaming facility license fee to be paid by an applicant.

Racing Law 1306(9) authorizes the Board to promulgate any rules and regulations that it deems necessary to carry out its responsibilities.

2. **LEGISLATIVE OBJECTIVES:** This rule making carries out the legislative objectives of the above referenced statutes by implementing the requirements of Racing Law section 1306(4) and section 1321-e(3).

3. **NEEDS AND BENEFITS:** This rule making is necessary to enable the Gaming Facility Location Board to carry out its statutory duty to prescribe the license fee for a gaming facility license issued by the Commission. Some stylistic amendments are also made to the existing rule to mirror Gaming Commission style conventions.

#### **4. COSTS:**

(a) Costs to the regulated parties for the implementation of and continuing compliance with the rules: An applicant chosen for gaming facility licensure will be required, by statute, to pay the license fee that is established.

(b) Costs to the regulating agency, the State, and local government: The proposed rules will impose no additional costs on the Board, the State or local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Gaming Commission's experience regulating racing and gaming activities within the State.

5. **PAPERWORK:** The proposed rules are not expected to impose any significant paperwork requirements for gaming facility applicants and licensees.

6. **LOCAL GOVERNMENT MANDATES:** The proposed rules do not impose any mandatory program, service, duty, or responsibility upon local government because the licensing of gaming facilities is strictly a matter of State law.

7. **DUPLICATION:** The proposed rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. **ALTERNATIVES:** The Board is required to create these rules under Racing Law sections 1306(4) and 1321-e(3). Racing Law section 1321-e(3) requires a minimum license fee of \$500,000,000. The Board considered setting a higher license fee, but determined that setting the fee at the statutory minimum and allowing applicants to propose paying a higher fee as a part of their applications would best serve the competitive structure of the gaming facility application process. The Board also considered setting variable license fees according to the term of the license or the level of capital investment proposed, or setting different license fees according to the location of the gaming facility, but determined that a flat fee for all applicants would best serve the competitive structure of the gaming facility application process.